

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks.	Rulemaking 93-04-003
Investigation on the Commission's Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks.	Investigation 93-04-002
Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service.	Rulemaking 95-04-043
Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service.	Investigation 95-04-044

**ASSIGNED COMMISSIONER'S RULING ON CONCLUDING
THE CALIFORNIA PUBLIC UTILITIES CODE
SECTION 709.2 INQUIRY**

On September 19, 2002, in Decision (D.) 02-09-050, this Commission issued its assessment of Pacific Bell's (Pacific) compliance with 47 U.S.C. § 271(c)(2) (Section 271). Included with the evaluation of Section 271 was the Commission's analysis of Pacific's satisfaction of California Public Utilities (Pub. Util.) Code § 709.2. The Commission affirmatively made only one of the four § 709.2(c)

determinations that are required before it can implement any orders authorizing or directing competition in intrastate interexchange telecommunications. The decision found that Pacific had “failed to show that there is no substantial possibility of harm to the competitive intrastate interexchange telecommunications market by its long distance entry in California.” D.02-09-050, *mimeo.*, at 261. It further found that the two remaining determinations could not be made on the existing record.

As I stated on September 19, the Commission intends to move forward and promptly complete its § 709.2(c) appraisal. There is no value in having this chapter of the Section 271 docket remain open and unresolved beyond the end of this quarter. Thus, I believe that it is now imperative to assess the record developed in this proceeding and determine whether or not there is a need to further augment it in order to conclude the § 709.2(c) inquiry.

Considering and reviewing the volume of data that has already been submitted in this matter on the § 709.2(c) issue, my preliminary evaluation is that the beneficial effect of further proceedings or additional rounds of briefings will be significantly outweighed by the time and resources that will be consumed in the process. D.02-09-050 affirmed existing mechanisms, such as federal and state commission auditing requirements and the performance incentive plan, to protect the California local exchange and interexchange telecommunications markets, and specifically crafted additional safeguarding measures in response to the problems and concerns identified in the § 709.2(c) inquiry. I believe that these mechanisms and safeguards sufficiently mitigate current and potential harm to the intrastate interexchange telecommunications market and make it possible for the Commission to proceed now and make the outstanding necessary determinations under § 709.2(c).

To assist the Commission in this regard, I would like the parties to consider the existing record, and address the following issues:

- 1.) Are further proceedings required before the Commission concludes its § 709.2(c) appraisal? If so, what outstanding issues need to be addressed?
- 2.) Can the performance incentives as well as the existing and specifically crafted § 709.2(c) safeguards mitigate present and potential competitive harms? If not, what additional measures are needed?
- 3.) How long should continuing safeguards, such as the joint marketing protections, be applied to Pacific?
- 4.) Do the determinations that the Commission makes pursuant to § 709.2(c) constitute discrete findings at the point of Pacific's entry into the intrastate interexchange telecommunications market or ongoing obligations?

Thus, **IT IS RULED** that:

1. The interested parties shall address the above-stated issues on or before the close of business, October 15, 2002.
2. Responses shall not exceed twenty pages double-spaced.
3. Commenters shall also electronically mail their submissions to the service list.

Dated October 4, 2002, at San Francisco, California.

/s/Geoffrey F. Brown
Geoffrey F. Brown
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner's Ruling on Concluding the California Public Utilities Code Section 709.2 Inquiry on all parties of record in this proceeding or their attorneys of record.

Dated October 4, 2002, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

